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8 MONTANA FOURTH JUDICIAL DISTRICT COURT,
9 MISSOULA COUNTY

10 STEVEN NEI,

11 Plaintiff,

12 vs.

13 THE TRAVELERS HOME AND MARINE
14 INSURANCE COMPANY, AND RELATED
TRAVELERS COMPANIES,

15 Defendants.

) Dept. No. 3

) Cause No. DV-17-781

John W. Larson

) SUMMONS

16
17 The State of Montana to the above-named defendant, The Travelers Home
and Marine Insurance Company:

18 You are hereby summoned to answer the complaint in this action which is
19 filed in the office of the clerk of this court, a copy of which is herewith served
upon you, and to file your answer and serve a copy thereof upon the Plaintiff's
20 attorney within twenty-one (21) days after the service of this Summons, exclusive
of the day of service; and in case of your failure to appear or answer, judgment
will be taken against you by default for the relief demanded in the Complaint.

21 Witness my hand and the seal of said court, this 2nd day of August, 2017.

22 *Shirley E. Faust*
CLERK OF COURT

23
24 (SEAL)

25 By *[Signature]*
Deputy Clerk

26
27
28
SUMMONS

Page 1

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FILED AUG 02 2017

SHIRLEY E. FAUST, CLERK
By Michael E. Egan Deputy

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) Dept. No. 3

) Cause No. DV-17-781

John W. Larson

) COMPLAINT AND DEMAND
) FOR JURY TRIAL

16
17 COMES NOW the Plaintiff, Steven Nei, by and through his counsel of
18 record and hereby makes the following claims against Defendant, The Travelers
19 Home and Marine Insurance Company and any of its related Travelers companies.
20 ("Travelers").

21 **I. JURISDICTION AND VENUE**

22 1. Steve Nei is a Montana citizen. He is a resident of Missoula,
23 Montana.

24 2. Travelers is a foreign insurance company that is incorporated outside
25 of the state of Montana. Travelers has done business in and continues to do
26 business in Montana. Pertinent to this case, Travelers was conducting business in
27 Montana through its insurance adjusters and lawyers from Missoula, Montana,
28 regarding Steve Nei's claims. Jurisdiction and venue are, therefore, proper before

COMPLAINT AND DEMAND FOR JURY TRIAL

COPY

Page 1

1 this Court.

2 **II. PARTIES**

3 3. Steve Nei incorporates by reference all allegations set forth above.
4 He further alleges as follows.

5 4. On January 6, 2015, Steve Nei was injured in a car wreck on
6 Highway 93 near Florence, Montana. The elderly woman who negligently caused
7 the wreck was insured by USAA. She did not have adequate liability insurance for
8 Steve Nei's injuries and damages.

9 5. At all times pertinent to this case, Steve Nei purchased automobile
10 insurance from Travelers to protect him and his family.

11 6. Travelers is an insurance company which sold Steve Nei automobile
12 insurance policies with underinsured and medical payment coverages.

13 7. Travelers engages in the insurance business in the State of Montana,
14 including the investigation, handling, and adjusting of automobile insurance
15 claims.

16 **III. FACTS COMMON TO ALL OF PLAINTIFF'S CLAIMS**

17 8. Steve Nei incorporates by reference all allegations set forth above.
18 He further alleges as follows.

19 9. Steve Nei is entitled to the underinsured and medical payment
20 coverages on his vehicles insured by Travelers.

21 10. Steve Nei suffered serious injuries which cost him his career as a
22 truck driver. The liability insurer paid its liability limits well over a year ago.
23 Since then, Steve Nei has notified Travelers and provided Travelers with all
24 pertinent proof of loss information regarding his injuries and damages.

25 11. After Travelers was notified of Steve Nei's claim, it took the position
26 that his claim was not worth more than the liability limits. Since then, Travelers
27 has refused to offer or pay anything to Steve Nei under its medical payment or
28 UIM coverages.

1 12. Steve Nei is entitled to stack the underinsured motorist and medical
2 payment coverages provided on his three vehicles insured with Travelers at the
3 time of the wreck.

4 13. On January 6, 2015, Steve Nei was driving with his daughter in their
5 Ford Taurus. They were traveling southbound on Highway 93.

6 14. A 78-year-old woman from the Bitterroot Valley, Shirley McDonald,
7 ran a stop sign at the intersection of Sweeney Creek Loop and Highway 93. She
8 drove her Dodge SUV in front of Steve Nei and his daughter.

9 15. Steve Nei tried to stop and swerve to avoid a collision. He hit the
10 Dodge SUV at highway speeds.

11 16. Shirley McDonald negligently caused the wreck. She was ticketed by
12 the Montana Highway Patrol. Her liability insurance company accepted liability.

13 17. Steve Nei's car was totaled. Steve Nei was badly injured. At impact,
14 his hand hit and broke the windshield. His body was twisted in the driver's seat.

15 18. As a result of the violent impact and forces involved, Steve Nei has
16 been diagnosed with severe injuries to his brain, spine, arm, hand, and extremities.

17 19. Steve Nei remembers coming to and hearing his daughter, Sadie Nei,
18 screaming uncontrollably in the back seat. Steve Nei has had flashbacks and
19 nightmares about the exploding sounds from the collision and the airbags
20 deploying, the smell and taste of the smoke and chemicals, burning in his lungs,
21 and his daughter's screaming.

22 20. Steve Nei was taken by ambulance to the hospital in Missoula
23 because of head pain, back pain, knee pain, neck pain, and left upper extremity
24 pain. He was also suffering from dizziness, fuzziness, and other symptoms
25 consistent with a head injury.

26 21. Steve Nei has undergone extensive medical treatment trying to find
27 relief from the chronic pain and problems that he has suffered since the wreck. He
28 has had physical therapy, injections, and tried various medications. He has been

1 diagnosed with permanent and disabling injuries caused by the wreck.

2 22. Since the fall of 2015, Steve Nei has been treated by Dr. Rosen in
3 Missoula.

4 23. Dr. Rosen is a well known and respected chronic pain and head injury
5 specialist.

6 24. Dr. Rosen's evaluations have noted problems with back pain,
7 numbness, tingling, and weakness radiating into Steve Nei's legs, neck pain, and
8 headaches. Dr. Rosen also noted significant issues with changes in Steve Nei's
9 mood, difficulty sleeping, and memory attributable to a traumatic brain injury. As
10 noted in Dr. Rosen's and other medical records, Steve Nei's personality and brain
11 functions have changed after the wreck. This, in turn, has impacted his
12 relationships with family and friends and his ability to function on a daily basis as
13 he was able to do before the wreck.

14 25. Dr. Rosen's impressions from his initial evaluation in September of
15 2015 include a Grade 3 concussion, history of PTSD, post-traumatic headaches,
16 sleep dysfunction, left ulnar neuropathy with associated motor apraxia, and low
17 back pain at the lumbosacral junction and SI joint. He attributed Steve Nei's leg
18 symptoms to nerve injury and nerve damage and/or lumbosacral and SI joint
19 dysfunction. PTSD and ongoing pain have contributed to "a social, vocational,
20 and avocational upheaval in his life." Steve Nei's decreased function was related
21 to the injuries in the wreck. Dr. Rosen's records state: "Steve is not capable,
22 physically or mentally, of returning to full time competitive employment" and he
23 anticipated that disability "will last at least another year."

24 26. Other medical records from Dr. Rosen and other medical providers
25 that Steve Nei has provided to Travelers indicate that Steve Nei is not able to
26 return to work in any gainful, full-time employment. Steve Nei has undergone
27 counseling and tried numerous medications for depressive disorder, PTSD, and
28 difficulties with sleep and anxiety.

1 27. Steve Nei's problems have not gone away. He is unable to return to
2 his job. Dr. Rosen's continued evaluations document that Steve Nei is not
3 gainfully employable due to his injuries. Travelers has been provided with
4 numerous medical records stating that Steve Nei is disabled from his previous job
5 and full-time, gainful employment because of his injuries.

6 28. Steve Nei has also suffered and continues to suffer daily pain and
7 problems from his injuries as set forth in medical records provided to and/or
8 released to Travelers.

9 29. In 2009, Steve Nei purchased automobile insurance from Travelers.
10 From 2009 through the date of the wreck, and for some time afterwards, Steve Nei
11 paid Travelers monthly premiums for automobile insurance on his vehicles.

12 30. Travelers accepted premiums and, in turn, promised to pay coverage
13 for underinsured motorists and medical bills, should it become necessary.

14 31. Steve Nei paid Travelers for medical payment coverage of \$5,000 for
15 each of his vehicles.

16 32. Steve Nei paid Travelers for underinsured motorist coverage of
17 \$500,000 for each of his vehicles.

18 33. Steve Nei and his family bought underinsured motorist coverage to
19 provide them with protection in case someone in their family was injured from a
20 negligent driver who did not have adequate liability insurance coverage.

21 34. The insurance agents informed Steve Nei that he would be entitled to
22 collect all damages caused by an underinsured motorist from his Travelers
23 insurance policy.

24 35. At the time of the wreck described above, Steve Nei and his family
25 had three vehicles insured by Travelers.

26 36. The medical payment coverages available to Steve Nei are to be
27 stacked for a total limit of \$15,000.

28 37. The underinsured motorist coverages available to Steve Nei are to be

1 stacked for a total limit of \$1,500,000.

2 38. Steve Nei notified Travelers about his injuries shortly after the wreck.

3 39. Travelers knew or should have known that Steve Nei is entitled to
4 underinsured motorist and medical payment coverages.

5 40. In 2015, Steve Nei provided Travelers with the release it requested to
6 obtain medical records and other information.

7 41. Steve Nei has, since that time, informed Travelers that the liability
8 limits were exhausted.

9 42. Steve Nei has provided Travelers with his medical records
10 demonstrating that his injuries disable him from returning to work as a truck
11 driver.

12 43. Steve Nei has provided Travelers with proof of medical expenses
13 related to the wreck in excess of the Travelers' medical payment limits of \$15,000.

14 44. Steve Nei has provided Travelers with proof of his lost wages and
15 earnings records showing that he was earning around \$85,000 per year at the time
16 of the wreck, not including fringe benefits.

17 45. As a result of the wreck and his injuries, Steve Nei has lost his CDL
18 and cannot work as a truck driver.

19 46. Travelers did not pay Steve Nei its medical payment limits of
20 \$15,000.

21 47. Travelers paid some of the medical bills from Steve Nei's medical
22 providers, but refused to pay others.

23 48. Steve Nei's medical expenses to date are over \$36,000. He continues
24 to need ongoing medical treatment due to his injuries.

25 49. Steve Nei suffers continuing disabilities and limitations from his
26 injuries. He has incurred and will continue to incur medical expenses, past and
27 future lost earnings and loss of earning capacity, loss of enjoyment of life, pain
28 and suffering, and emotional distress.

1 50. Steve Nei has suffered and continues to suffer pain and problems
2 related to his injuries. His compensatory damages for wage loss, medical
3 expenses, and the impact this has had on his life exceed the underinsured motorist
4 and medical payment benefits that he purchased from Travelers.

5 51. Based upon the above, Steve Nei asserts the following claims.

6 **IV. COUNT ONE – DECLARATORY RELIEF**

7 52. Steve Nei incorporates by reference all allegations set forth above.
8 He further alleges as follows.

9 53. Steve Nei seeks a declaratory ruling that he is entitled to medical
10 payment coverages of \$5,000 per vehicle which should be stacked under Montana
11 law, resulting in \$15,000 in medical payments.

12 54. Steve Nei seeks a declaratory ruling that he is entitled to underinsured
13 motorist coverages of \$500,000 per vehicle which should be stacked under
14 Montana law, resulting in \$1.5 million in underinsured motorist coverage.

15 55. Steve Nei has been medically disqualified from his previous job. He
16 was 50 years old at the time of the wreck. Assuming a normal retirement age,
17 Steve Nei's lost wages and medical expenses, past and future, exceed the
18 Travelers' insurance policy limits for each vehicle and all of them combined.
19 When the impact on his life is considered, his damages greatly exceed the
20 Travelers' limits.

21 56. Travelers has refused to issue any payments or offer anything from
22 any of its limits for the vehicles Steve Nei had insured with Travelers, other than
23 paying some of the medical bills.

24 57. Travelers has refused to provide any information that it has collected
25 to investigate and evaluate Steve Nei's claim or that would support its refusal to
26 offer anything.

27 58. Travelers knew or should have known, based upon the available
28 information, that Steve Nei's damages exceed its limits.

1 59. Instead of recognizing and complying with its fiduciary obligations
2 and taking care of its policyholder, Travelers has decided to deny and delay
3 payment.

4 60. Travelers has used a pattern of making requests for irrelevant or
5 duplicate information, information that does not exist, and by seeking to hire
6 forensic medical examiners to justify its own predetermination about this claim.

7 61. Travelers has refused to cooperate and provide information that Steve
8 Nei authorized it to obtain or that it was obtaining to evaluate, delay, or deny his
9 claim.

10 62. Steve Nei requests a ruling that the total limits applicable to this
11 claim, when stacked, are \$1,515,000.

12 63. Steve Nei requests that Travelers be required to pay the policy limits.

13 64. Steve Nei requests that Travelers pay attorneys' fees and costs under
14 the circumstances.

15 **V. COUNT TWO - STATUTORY VIOLATIONS**

16 65. Steve Nei incorporates by reference all allegations set forth above.
17 He further alleges as follows.

18 66. Insurance companies doing business in Montana are obligated to
19 conduct a prompt and reasonable investigation of all claims.

20 67. Insurance companies doing business in Montana are required to
21 attempt to effectuate a prompt and fair settlement of all claims.

22 68. Travelers knew or should have known that it was required to deal
23 fairly with Steve Nei, act in good faith at all times, and communicate clearly,
24 honestly, and completely with him while handling his claim.

25 69. Travelers and other insurance companies are required not to place
26 their own economic interests over the obligation to take care of their insureds.

27 70. Travelers violated its responsibilities under Mont. Code Ann. § 33-
28 18-201, et. seq. Pursuant to Mont. Code Ann. § 33-18-242, Steve Nei asserts

1 claims for Travelers' violations of § 33-18-201.

2 71. Travelers was provided with the pertinent medical records and wage
3 loss information supporting Steve Nei's claims. Travelers was authorized to
4 obtain and did otherwise obtain pertinent information regarding Steve Nei, his
5 injuries, and his claim.

6 72. Instead of fairly and promptly evaluating the pertinent information,
7 Travelers decided to deny Steve Nei's claim.

8 73. Travelers made a predetermined evaluation of Steve Nei's claim
9 while Steve Nei was still undergoing medical treatment and before the liability
10 insurance carrier paid its policy limits. After that, Travelers has engaged in a
11 pattern of conduct in order to support its predetermination and deny paying Steve
12 Nei the benefits that it owed to him under its insurance policy's coverages.

13 74. Travelers refused to accept the statements from Steve Nei's medical
14 providers, including Dr. Rosen, that Steve Nei was unable to return to work.
15 Instead of accepting medical proof, Travelers decided to delay payments by
16 insisting on obtaining private and irrelevant medical records and other
17 information.

18 75. Travelers has delayed things further by stating that it needed more
19 information before it could send Steve Nei to its hand-picked doctors for forensic
20 medical evaluations in order to support its position. It failed to attempt to
21 schedule any such appointments, identify who Steve Nei should see, or when he
22 should attend any such appointments. It appears that Travelers wanted to obtain a
23 forensic psychiatrist to provide testimony favorable to it regarding Steve Nei's
24 injuries and damages.

25 76. Instead of having any medical records reviewed or taking his
26 statement, Travelers continued its pattern of insisting that Steve Nei provide
27 irrelevant information, duplicate information, information that could not be
28 obtained, and information that was subject to privacy rights. Travelers also

1 claimed not to have information that it actually had or had access to obtain.

2 77. Instead of treating Steve Nei fairly, Travelers also refused to
3 cooperate and share any information that it had obtained about him or any
4 information which it was supposed to be considering to evaluate his claim.

5 78. If Travelers had been acting in good faith, it would have considered
6 and evaluated the medical information and damages information pertinent to Steve
7 Nei's claim and reasonably and fairly offered to resolve his claim or made
8 payments to him.

9 79. Travelers' actions and omissions have included: misrepresenting
10 pertinent facts and policy provisions; failing to act reasonably promptly; refusing
11 to pay claims without conducting a reasonable investigation based on the readily-
12 available and relevant information; failing to affirm or deny coverage of claims
13 under the insurance policy provisions within a reasonable time after relevant proof
14 of loss statements were completed; failing to attempt in good faith to effectuate a
15 fair and equitable settlement; requiring Steve Nei to pursue litigation to obtain
16 benefits and information that Travelers should have provided; and failing to
17 explain and support the detailed bases in law or in fact for its position. Travelers'
18 conduct is part of a pattern to deny or delay payment of claims which violates
19 Montana's insurance laws, including Mont. Code Ann. §§ 33-18-201(1)(2)(4)(5)
20 (6)(7) and (14).

21 80. Steve Nei has suffered damages as a result of Travelers' conduct. He
22 paid insurance premiums for the peace of mind and protection afforded by medical
23 payment and underinsured motorist coverages. Instead of paying any of these
24 benefits to Steve Nei, Travelers has benefitted from refusing to pay Steve Nei's
25 claims. Travelers has chosen a business strategy to the detriment of its insurance
26 policy holders and others making claims on account of their injuries. Travelers'
27 approach to Steve Nei's claim has caused additional stress and problems to
28 someone that Travelers knew to be suffering from a head injury, PTSD,

1 depression, and emotional distress.

2 **VI. COUNT THREE - COMMON LAW CLAIMS**

3 81. Steve Nei incorporates by reference all allegations set forth above.
4 He further alleges as follows.

5 82. Steve Nei alleges that the nature of the relationship under the
6 circumstances required Travelers to act in compliance with the covenant of good
7 faith and fair dealing, observe honesty and fact, and comply with reasonable
8 commercial standards of fair dealings governing insurance companies. These
9 obligations are heightened in the context of underinsured motorist coverage
10 wherein it is known that a person, by definition, is in need of the protection and
11 security that is supposed to be provided by underinsured motorist coverage.

12 83. Travelers placed its own interests above its insured and has refused to
13 provide pertinent information regarding its own investigation of Steve Nei's claim
14 and regarding information that it was collecting and relying on to refute his claim.

15 **VII. COUNT FOUR - PUNITIVE DAMAGES**

16 84. Steve Nei incorporates by reference all allegations set forth above.
17 He further alleges as follows.

18 85. Travelers' acts and omissions violated its contractual obligations, the
19 duties imposed above, and are indicative of a general practice designed to defeat
20 claims and place its economic interests over that of its insureds. This scheme
21 allows Travelers to increase revenues while depriving claimants of compensation
22 to which they are entitled. Travelers' conduct constitutes actual fraud or actual
23 malice as defined by Montana law. Punitive damages are justified to punish and to
24 deter this conduct. Mont. Code Ann. §§ 27-1-220,-221.

25 **VIII. DAMAGES**

26 Steve Nei incorporates by reference all allegations set forth above. He
27 further alleges as follows.

28 WHEREFORE Steve Nei prays for the following relief:

1 1. For a determination that Travelers is required to pay Steve Nei for all
2 benefits under the three vehicles it insured.

3 2. For pre-judgment and post-judgment interest as required by Montana
4 law.

5 3. For all attorneys' fees and costs.

6 4. For compensatory damages for injuries, delay, distress, and
7 aggravation of injuries given Travelers knew that Steve Nei suffered emotional
8 issues due to a traumatic brain injury and PTSD.

9 5. For all special and general damages Steve Nei has suffered in
10 amounts to be determined at trial.

11 6. For punitive damages.

12 7. For such other and further relief as this Court deems just and proper
13 under the circumstances.

14 Dated this 1st day of August, 2017.

15 TOWE & FITZPATRICK, PLLC

16
17 by: James T. Towe
18 James T. Towe
19 Attorneys for Plaintiff

20
21 **DEMAND FOR JURY TRIAL**

22 Plaintiff respectfully demands a trial by jury for all issues so triable herein.

23 DATED this 1st day of August, 2017.

24 TOWE & FITZPATRICK PLLC

25
26 By: James T. Towe
27 James T. Towe
28 Attorneys for Plaintiff

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17

) Dept. No. 3
) Cause No. DV-17-781
) Hon. John W. Larson
) **NOTICE OF A LAWSUIT**
) **AND REQUEST TO**
) **ACKNOWLEDGE AND**
) **WAIVE SERVICE OF A**
) **SUMMONS - THE**
) **TRAVELERS HOME AND**
) **MARINE INSURANCE**
) **COMPANY**

18 TO: Insurance Commissioner
Office of the Montana State Auditor
19 840 Helena Ave.
Helena, MT 59601
20 **Agent for The Travelers Home and Marine Insurance Company**

21 **Why are you getting this?**

22 A lawsuit has been filed against you, or the entity you represent, in this
23 court under the number shown above. A copy of the complaint is attached.

24 This is not a summons, or an official notice from the court. It is a request
25 that, to avoid expenses, you acknowledge and waive formal service of a summons
26 by signing and returning the enclosed acknowledgment and waiver. To avoid
27 these expenses, you must return the signed acknowledgment and waiver within 21
28 days (42 days if you are the State of Montana, a state agency, or a state officer or

NOTICE OF A LAWSUIT AND REQUEST TO ACKNOWLEDGE AND WAIVE SERVICE OF A
SUMMONS

Page 1

COPY

employee) from the date shown below, which is the date this notice was sent. Two copies of the acknowledgment and waiver are enclosed along with a prepaid means of returning the signed copy of the notice and the acknowledgment. You may keep the other copy.

What happens next?

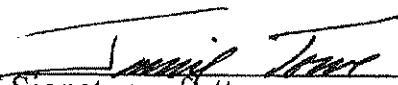
If you return the signed acknowledgment and waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 30 days from the date you sign the acknowledgment and waiver (42 days if you are the State of Montana, a state agency, or a state officer or employee sued in an official capacity) to answer the complaint.

If you do not return the signed acknowledgment and waiver within the time indicated, I will arrange to have the summons and complaint served on you, and I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: 9/26/17


Signature of attorney or unrepresented party

James T. Towe
Printed name

P.O. Box 1745, Missoula, MT 59806
Address

jamie@towefitzlaw.com
E-mail address

406-829-1669
Telephone Number

DUTY TO AVOID UNNECESSARY EXPENSES

Rule 4 of the Montana Rules of Civil Procedure has a provision to avoid the unnecessary expenses of serving a summons and complaint. A defendant who fails to return a signed acknowledgment and waiver of service requested by a plaintiff will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the acknowledgment and waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the acknowledgment and waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court.